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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SUNBELT RENTALS, INC., a/k/a SUNBELT
RENTALS – REGION 8,

Case No. 4:20-cv-04039-YGR

AMENDED COMPLAINT

Date: July 21, 2020

Judge: Yvonne Gonzalez Rogers

Plaintiff,

v.

T.B. PENICK AND SONS, INC., WP WEST
BUILDERS CALIFORNIA L.P., and RLI
INSURANCE COMPANY,

Defendants.

Plaintiff, Sunbelt Rentals, Inc., a/k/a Sunbelt Rentals – Region 8 (“Sunbelt”) files this amended complaint under Federal Rule of Civil Procedure 15(a)(1)(B) against T.B. Penick and Sons, Inc. (“TB Penick”), WP West Builders California L.P. (“West Builders”), and RLI Insurance Company (“RLI”).

Parties

1. Plaintiff Sunbelt is a corporation formed under the laws of North Carolina. Its principal place of business is in South Carolina.

2. Defendant TB Penick is a corporation formed under the laws of California. Its principal place of business is in California.

3. Defendant West Builders is a limited partnership formed under the laws of
1 Georgia and authorized to do business in California. Upon information and belief, none of its
2 partners are resident citizens of the State of North Carolina or the State of South Carolina.
3

4 4. Defendant RLI is a corporation formed under the laws of Illinois. Its principal
5 place of business is in Illinois.

Jurisdiction

7 5. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C.
8 § 1332 because the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest
9 and costs, and is between citizens of different states.

Venue

11 6. Venue is proper in this Court because “a substantial part of the property that is the
12 subject of the action is situated” within the Northern District of California. 28 U.S.C.
13 § 1391(b)(2); 28 U.S.C. § 84(a).

14 7. The property at issue is located in San Francisco County, and thus assignment to
15 the San Francisco or Oakland division is appropriate. L.R. 3.2(d).

Facts

17 8. Sunbelt rents equipment to its customers for use primarily in construction projects
18 across the country.

19 || 9. TB Penick is a contractor.

20 10. TB Penick had an open account with Sunbelt through which TB Penick could rent
21 equipment from Sunbelt on credit.

22 11. During 2019, Sunbelt rented certain equipment (the “Equipment”) to TB Penick
23 for TB Penick’s use on a construction project commonly known as the Alta Potrero Hill project,
24 located at 1301 16th Street, San Francisco, California 94107 (“the Project”).

25 12. TB Penick did not fully pay Sunbelt the rental charges for the Equipment.

26 13. TB Penick agreed to Sunbelt's Terms and Conditions (the "Rental Contract,"
27 attached as Exhibit 1).

1 14. The Rental Contract was incorporated into the invoices, and one such invoice,
 2 digitally signed by Craig Martin on behalf of TB Penick, is attached as Exhibit 2 as an exemplar.

3 15. Unpaid invoices (the “Invoices”) reflecting the Equipment TB Penick rented from
 4 Sunbelt and the associated rental fees are attached as Exhibit 3.

5 16. An account summary that includes the amounts of all of the Invoices is attached
 6 as Exhibit 4.

7 17. Exhibit 4 reflects that as of March 6, 2020, the total unpaid principal amount of
 8 the Invoices is \$275,438.37 (the “Principal Amount”).

9 18. The Rental Contract provides for a service charge that accrues at a rate of 1.5%
 10 per month on the balance of delinquent invoices until the invoices are fully paid. *See*
 11 Exhibit 1, § 12.

12 19. The Rental Contract provides that Sunbelt can recover from TB Penick its
 13 reasonable attorneys’ fees and costs incurred in efforts to collect amounts TB Penick owes
 14 Sunbelt. *See* Exhibit 1, § 15.

15 20. Upon information and belief, TB Penick was the general contractor on the Project.

16 21. TB Penick did not fully pay Sunbelt for the use of the Equipment that Sunbelt
 17 rented to TB Penick.

18 22. In accordance with Cal. Civ. Code § 8200, Sunbelt timely gave preliminary notice
 19 to the Project owners, a copy of which is attached as Exhibit 5.

20 23. On April 7, 2020, Sunbelt filed a lien (the “Lien,” attached as Exhibit 6) in the
 21 amount of \$275,360.40 (the “Lien Amount”) in San Francisco County, California.

22 24. A copy of the Lien was timely served on the Project owners pursuant to Cal. Civ.
 23 Code § 8416.

24 25. All conditions precedent for the perfection of Sunbelt’s Lien on the Project and
 25 Property and enforcement of the Lien were satisfied.

26 26. Thereafter, West Builders, as principal, with RLI as the surety, filed a Mechanic’s
 27 Lien Release Bond on April 24, 2020 (the “Bond”) releasing the real property from the Lien and
 28

1 guaranteeing the payment of the sum of the Lien upon a successful lien enforcement action. A
 2 copy of the Bond is attached as Exhibit 7.

3 **Claim 1 – Breach of Contract**

4 27. Sunbelt incorporates the previous allegations presented in this Amended
 5 Complaint.

6 28. The Rental Contract and the Invoices constitute the contract between Sunbelt and
 7 TB Penick.

8 29. Under the terms of the contract, TB Penick agreed to pay Sunbelt for rental of the
 9 Equipment.

10 30. TB Penick breached that contract by not fully paying Sunbelt for its rental of the
 11 Equipment.

12 31. Sunbelt suffered damages because of TB Penick's breach of contract.

13 **Claim 2 – Lien Enforcement Against Bond**

14 32. Sunbelt incorporates the previous allegations contained in this Amended
 15 Complaint.

16 33. Sunbelt has a valid lien on the Property to secure payment for the Equipment it
 17 rented to TB Penick to be used in connection with the Project.

18 34. Under California Civil Code § 8424, West Builders and RLI recorded the Bond in
 19 the amount of \$344,200.50 to pay any judgment Sunbelt receives against the Property.

20 35. Sunbelt has fulfilled all requirements to enforce the Lien against the Bond.

21 36. Sunbelt is entitled to a judgment against West Builders and RLI, as principal and
 22 surety on the Bond, for all legal amounts Sunbelt is entitled to recover based on its rights under
 23 the Bond and Lien.

24 **Demand for Relief**

25 ACCORDINGLY, Sunbelt respectfully requests that the Court enter a judgment in
 26 Sunbelt's favor and against the Defendants granting the following relief:

27 i. declaring that the Lien was properly perfected and making West
 28 Builders and RLI, as principal and surety on the Bond, jointly and

1 severally liable to Sunbelt for all legal amounts Sunbelt is entitled to
2 recover based on its rights under the Bond and Lien;
3 ii. making T.B. Penick liable to Sunbelt for the following:
4 - the Principal Amount,
5 - service charges that have accrued and that will continue to accrue
6 until the Principal Amount is fully paid,
7 - all other damages Sunbelt has suffered,
8 - Sunbelt's reasonable and necessary attorneys' fees and costs,
9 - prejudgment interest,
10 - post-judgment interest, and
11 - any other relief that the Court deems appropriate.

12 Dated: July 21, 2020
13

14 Respectfully submitted,
15 SUNBELT RENTALS, INC.
16

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